

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

BEN GARY TREISTMAN et al.,

Plaintiffs,

**1:12-cv-1897
(GLS/CFH)**

v.

**VALERIE LYN WACKS, ESQ. et
al.,**

Defendants.

SUMMARY ORDER

On June 4, 2013, Cynthia Feathers, Esq., attorney and guardian ad litem for plaintiff A.T., filed a report that outlines A.T.'s opposition to the application for a temporary restraining order and preliminary injunction filed by plaintiff *pro se* Ben Gary Treistman on behalf of himself and A.T., and her desire to have all claims asserted on her behalf dismissed. (See Dkt. No. 31.) Because A.T. is now represented and her position regarding this litigation could not be more clear, the court may now consider the merits of the stayed application by order to show cause. See *Berrios v. N.Y.C. Hous. Auth.*, 564 F.3d 130, 134 (2d Cir. 2009); (Dkt. No. 12.) That application seeks a temporary restraining order and preliminary injunction prohibiting defendants "from interfering with, obstructing, coercing against,

sanctioning against, penalizing, or preventing the [plaintiffs] from discussion and free conversation of their pending or future court matters.” (Dkt. No. 12, Attach. 1 at 1-2.)

“[P]reliminary injunctive relief is an extraordinary remedy and should not be routinely granted.” *Patton v. Dole*, 806 F.2d 24, 28 (2d Cir. 1986).

“In most cases, to warrant the issuance of a preliminary injunction, a movant must show (a) irreparable harm and (b) either (1) a likelihood of success on the merits of the claim or (2) sufficiently serious questions going to the merits, and a balance of hardships tipping decidedly in favor of the moving party.” *Phelan v. Hersh*, No. 9:10–CV–0011, 2010 WL 277064, at *5 (N.D.N.Y. Jan. 20, 2010) (citing *D.D. ex rel. V.D. v. N.Y.C. Bd. of Educ.*, 465 F.3d 503, 510 (2d Cir. 2006)).

Notably, A.T. has informed the court since the appointment of Feathers that she “does not have an interest that she needs to protect via such application.” (Dkt. No. 31 at 3.) Accordingly, the court denies the application with respect to A.T. for that reason alone. It is denied with respect to Treistman because of his failure to make the necessary showing under the applicable standard. In particular, he has not shown a likelihood of success on the merits of his underlying claims, which pertain mostly to

his allegations that defendants violated his rights in relation to his communication with A.T. during supervised visitation, (*see generally* Compl., Dkt. No. 1), or sufficiently serious questions going to the merits, and a balance of hardships in his favor. Accordingly, the application is also denied as it relates to Treistman.

The court now turns to A.T.'s recent filing, which the court construes as a motion seeking that the claims asserted on her behalf by Treistman—who was not authorized to represent her *pro se*—be dismissed.¹ (See Dkt. No. 31; *see also* Dkt. No. 19.) In support of that application, A.T. expresses that she has no interest in the litigation, and it appears that it is having a negative impact on her well being. (See Dkt. No. 31 at 3.) In light of the foregoing, the court hereby dismisses all claims asserted on A.T.'s behalf.

ACCORDINGLY, it is hereby

ORDERED that plaintiffs' application for a temporary restraining order and preliminary injunction (Dkt. No. 12) is **DENIED**; and it is further

ORDERED that all claims asserted on behalf on A.T. are

¹ Necessarily, the court grants A.T. leave to so move. See N.D.N.Y. L.R. 17.1(a).

DISMISSED; and it is further


ORDERED that the Clerk **TERMINATE** A.T. as a plaintiff in this case;
and it is further

ORDERED that the Clerk **TERMINATE** Cynthia Feathers, Esq. as
attorney and guardian ad litem for A.T.; and it is further

ORDERED that the Clerk provide a copy of this Summary Order to
the parties.

IT IS SO ORDERED.

June 5, 2013
Albany, New York



Gary L. Sharpe
Chief Judge
U.S. District Court